

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: David C. Boike

Serial No.: 09/410,150

Filed: 09/30/1999

Title: System Interface Abstraction  
Layer

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Group Art Unit: 2126

Examiner: Lewis Alexander Bullock, Jr.

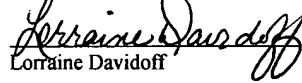
Conf. No.: 6431

Atty. Docket: 13644.0011

Mail Stop Issue Fee  
Commissioner for Patents  
P.O. Box 1450  
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I hereby certify that this Issue Fee Transmittal and enclosures are being deposited with the United States Postal Service with sufficient postage for first class mail in an envelope addressed to the address indicated on the date indicated below:

  
Lorraine Davidoff

June 17, 2005  
Date

ISSUE FEE TRANSMITTAL

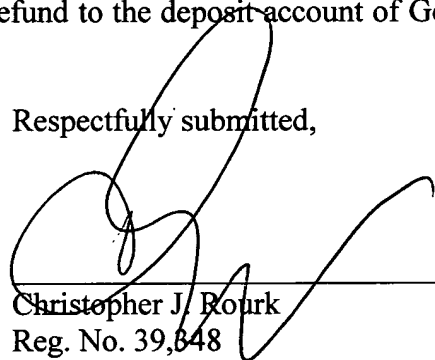
Enclosed are:

1. Issue Fee Transmittal (1 page);
2. Comments on Statement Regarding Reasons for Notice of Allowance;
3. Check No. 53973 in the amount of \$1,400.00; and,
4. Return Post Card.

If any applicable fee or refund has been overlooked, the Commissioner is hereby authorized to charge any fee or credit any refund to the deposit account of Godwin Gruber LLP, No. 50-0530.

Respectfully submitted,

Date: June 17, 2005

  
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COMMENTS ON STATEMENT

REGARDING REASONS FOR NOTICE OF ALLOWANCE

In regards to the statement of reasons for allowance, the Applicants note that the statement by the Examiner adds ambiguity and should be afforded no weight in the construction of the claims. As an initial matter, the Notice of Allowability states that it is responsive to the after final response filed 2/1/05, but the applicants mailed the after final response on January 28, 2005. Thus, it should first be clarified that the Notice of Allowability is responsive to the after final response filed January 28, 2005. The only other activity that occurred after the submission of the amendment after final was the telephone interview on March 10, 2005, where permission was given to add "on a communications card" to claim 11. This was allegedly required in order to overcome a rejection under 35 U.S.C. 101, but Federal Circuit case law has made it clear that software is patentable and that there is no need to add "tangible structure." However, in order to expedite prosecution, the Applicants agreed to the modification without prejudice or waiver.

Furthermore, the Examiner states that the "claims are allowable for at least the following reasons: The cited claims detail a system interface abstraction layer comprising the cited operating system interface....." It is unclear what the Examiner is referring to in regards to the "cited

claims" or the "cited operating system interface." Does the Examiner mean to refer to the claims in the cited prior art and any cited operating system interface that was disclosed in the prior art that was cited against the application, or is he instead referring to the claimed operating system interface? Statements such as this only introduce ambiguity and uncertainty.

The Examiner also refers to material in dictionaries in the statement of reasons for allowance that are not present in the claims. The Applicants have not limited the scope of any of the claims by incorporating this material into the claims, and in fact distinguished over any prior art cited by the Examiner to obtain allowance of the claims. Likewise, the Examiner cites to the specification, but the Applicants have not limited the claims to any of the exemplary embodiments in the specification, and thus these exemplary embodiments do not define the scope of the allowed claims.

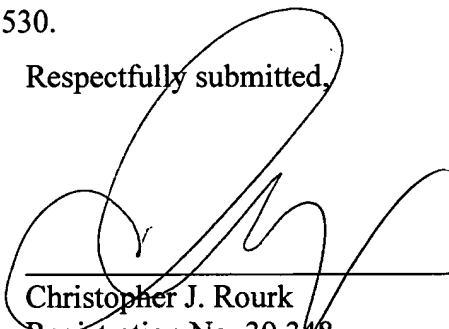
The Examiner has also characterized the claims in the reasons for allowance using terminology other than the claim language of the allowed claims. The Applicants disagree with the Examiner's statements, and believe that the wording of the claims and prosecution history speak for themselves and that additional commentary by the Examiner not only adds ambiguity as to the scope of the claims but seeks to impose limitations from the specification or extrinsic sources into the claims. The Examiner's statement of reasons for allowance goes beyond the mandate of MPEP 1302.14, and many of the statements are comparable to the examples provided under the heading "EXAMPLES OF STATEMENTS THAT ARE NOT SUITABLE AS TO CONTENT."

As such, the Applicants disagree in total with the statements for reason of allowance, and believe that they are improper and should not in any way limit the scope of the claims or otherwise provide prosecution history estoppel, and in fact indicate that any claim limitations that were not correctly recited and explicitly addressed should be given their broadest possible scope. Likewise, all elements of all claims should be given the full range of equivalents.

No additional fee is believed to be due, however, if any applicable fee or refund has been overlooked, the Commissioner is hereby authorized to charge any fee or credit any refund to the deposit account of Godwin Gruber, LLP, No. 50-0530.

Respectfully submitted,

Date: June 17, 2005



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